

104TH CONGRESS
2D SESSION

S. 1852

To bar class action lawsuits against Department of Energy contractors for nonphysical injuries, to bar the award of punitive damages against Department of Energy contractors for incidents occurring before August 20, 1988, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 7, 1996

Mr. JOHNSTON introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To bar class action lawsuits against Department of Energy contractors for nonphysical injuries, to bar the award of punitive damages against Department of Energy contractors for incidents occurring before August 20, 1988, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Department of Energy
5 Class Action Lawsuit Act”.

1 **SEC. 2. CLASS ACTIONS.**

2 Section 170n. of the Atomic Energy Act of 1954 (42
3 U.S.C. 2210(n)) is amended by adding after paragraph
4 (3) the following:

5 “(4)(A) An action may not be maintained as a
6 class action under Rule 23 of the Federal Rules of
7 Civil Procedure against any person indemnified by
8 the United States under section 170d. with respect
9 to any claim for a nonphysical injury that arises
10 from a nuclear incident or precautionary evacuation
11 regardless of when it occurred.

12 “(B) For purposes of this paragraph, ‘nonphys-
13 ical injury’ includes—

14 “(i) emotional distress and any mental or
15 emotional harm (such as fright or anxiety) that
16 is not directly brought about by a physical in-
17 jury even though it may manifest itself in phys-
18 ical symptoms; and

19 “(ii) diminution of value of property result-
20 ing from fear or reputation and not from phys-
21 ical injury or loss.

22 “(C) For purposes of this paragraph and para-
23 graph (5), the term ‘person indemnified by the Unit-
24 ed States under section 170d.’ means any person in-
25 demnified by the United States—

26 “(i) under section 170d.; or

1 “(ii) under any other authority that obli-
2 gates the United States to make payments re-
3 lating to a nuclear incident or precautionary
4 evacuation that arises from activities conducted
5 under contract with the Department of Energy
6 or any of its predecessor agencies.”.

7 **SEC. 3. MEDICAL MONITORING.**

8 Section 170n. of the Atomic Energy Act of 1954 (42
9 U.S.C. 2210(n)) is further amended by adding at the end
10 the following:

11 “(5)(A) Except in the case of an extraordinary
12 nuclear occurrence, medical monitoring provided by
13 the Agency for Toxic Substances and Disease Reg-
14 istry under section 104(i) of the Comprehensive En-
15 vironmental Response, Compensation, and Liability
16 Act (42 U.S.C. 9604(i)) shall be the exclusive rem-
17 edy for any claim for medical monitoring in a public
18 liability action against a person indemnified by the
19 United States under section 170d. No court may
20 grant a remedy for a claim for medical monitoring
21 in a public liability action except in the case of an
22 extraordinary nuclear occurrence or as provided in
23 section 310(a)(2) of the Comprehensive Environ-
24 mental Response, Compensation, and Liability Act
25 (42 U.S.C. 9659(a)(2)).

1 “(B) For purposes of this paragraph, ‘medical
 2 monitoring’ includes any medical screening, testing,
 3 or surveillance program intended to detect, study,
 4 prevent, or treat bodily injury, sickness, disease, or
 5 death that may arise from a nuclear incident or pre-
 6 cautionary evacuation.”.

7 **SEC. 4. PUNITIVE DAMAGES.**

8 Section 170s. of the Atomic Energy Act of 1954 (42
 9 U.S.C. 2210(s)) is amended to read as follows:

10 “s. LIMITATION ON PUNITIVE DAMAGES.—No court
 11 may award punitive damages in any action with respect
 12 to a nuclear incident or precautionary evacuation against
 13 a person on behalf of whom the United States is obligated
 14 to make payments under any agreement of indemnifica-
 15 tion covering the incident or evacuation, regardless of—

16 “(1) when the incident or evacuation occurred;
 17 or

18 “(2) whether the agreement of indemnification
 19 was entered into under this Act or under any other
 20 authority.”.

21 **SEC. 5. ACTIONS COVERED.**

22 The provisions of this Act shall apply to any public
 23 liability action (as defined in section 11hh. of the Atomic
 24 Energy Act of 1954 (42 U.S.C. 2014(hh)) that is pending

- 1 on the date of the enactment of this Act or commenced
- 2 on or after such date.

